

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

v

File No. 85784-001

U. S. Health and Life Insurance Company
Respondent

**Issued and entered
this 28th day of December 2007
by Ken Ross
Acting Commissioner**

ORDER

**I
PROCEDURAL BACKGROUND**

On October 15, 2007, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The request was incomplete, but after receiving additional information, the Commissioner accepted it on October 24, 2007.

The Commissioner notified U. S. Health and Life Insurance Company (USHL) of the external review and requested the information used in making its adverse determination. Information was received on October 17 and 31, 2007, from USHL.

The case presented a medical question so the Commissioner assigned it to an independent review organization (IRO), which provided its analysis to the Commissioner on November 2, 2007.

**II
FACTUAL BACKGROUND**

The Petitioner had a nasal tip deformity and underwent revision nasal reconstruction on May 21, 2007.

Claims for the procedure were submitted and USHL denied coverage, saying the procedure was cosmetic in nature and not medically necessary. When the Petitioner appealed, USHL reviewed the claim but upheld its denial. A final adverse determination was issued September 10, 2007.

III ISSUE

Is USHL correct in denying coverage for the Petitioner's surgery?

IV ANALYSIS

Petitioner's Argument

In 2002 the Petitioner had nasal reconstruction following surgery to remove a tumor.¹ Post surgically she developed a protrusion of a strut graft against the nasal tip that caused some ulceration.

The Petitioner's authorized representative (her surgeon) says the revision procedure in 2007 was not cosmetic but "was medically necessary due to the protrusion of a nasal tip graft with associated skin ulcerations...." The Petitioner argues that USHL should provide coverage for her nasal reconstruction because it was medically necessary to correct the deformity that developed and continued to ulcerate as a result of the 2002 surgery.

U. S. Health and Life Insurance Company's Argument

USHL asserts that its denial of coverage was correct. The Petitioner's certificate of insurance (the certificate) excludes coverage for medical procedures which are cosmetic in nature. USHL references these provisions in the certificate:

COMPREHENSIVE MAJOR MEDICAL INSURANCE BENEFITS are payable at the coinsurance percentage shown in the Schedule of covered expense charges incurred for the treatment of accidental bodily injury or disease to the extent that such charges exceed the deductible during a calendar year.

* * *

Charges in connection with cosmetic surgery and dental work are not covered charges except as specified below:

¹ Although there are references in the record that say the 2002 surgery was needed because of a traumatic injury, the Petitioner, in a note to USHL dated November 1, 2007, said the surgery was needed to remove a sinus tumor and was not the result of an accident.

COSMETIC SURGERY: charges by a physician for treatment of injuries sustained in an accident occurring while insured, provided the treatment begins within 90 days after the accident; and charges for treatment of congenital anomaly in a child born while its mother is insured.

USHL says the Petitioner's medical records do not indicate there was an injury or illness that was treated by the May 2007 surgery. USHL also says that since the Petitioner's cosmetic surgery did not begin within 90 days of any accidental injury, it is excluded from coverage.

Commissioner's Review

The Commissioner has carefully reviewed the arguments of the parties as well as the documentation and certificate of insurance.

The certificate has only very limited coverage for adult cosmetic surgery. To be covered, the cosmetic surgery must be "for treatment of injuries sustained in an accident occurring while insured, provided the treatment begins within 90 days after the accident...." The Petitioner has not argued that the need for the procedure in 2007 arose from an accidental injury or was begun within 90 days of an accident, and on that basis the Commissioner might have found that the surgery was not a covered benefit. However, the Petitioner argues that the surgery was not cosmetic but medically necessary.

The certificate requires that services and treatment be medically necessary, saying on page 15:

Medical benefits...are payable only if the person on whom the claim is based is under the regular care of the physician and the covered supplies or services are NECESSARY.... The term "necessary" means that the services or supplies are broadly accepted professionally as essential to the treatment of the injury or disease.

To answer the question of whether the procedure was medically necessity, the Commissioner requested an analysis and recommendation from an IRO. The IRO expert reviewing this case is board certified in plastic surgery and otolaryngology, holds an academic appointment, and is in active practice.

The IRO reviewer noted that the Petitioner had nasal reconstruction on February 4, 2002. The IRO reviewer further noted that no photographs were provided for review. The IRO reviewer said the May 21, 2007, operative report described elevating the nasal skin, but did not document ulceration,

protrusions of the graft through the nasal skin, infection, cellulites, or graft exposure. Based on the records submitted for review, the IRO reviewer concluded that the Petitioner's nasal septal reconstruction was not medically necessary for treatment of the Petitioner's condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; it is based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the findings of the IRO reviewer and finds that the medical necessity of the Petitioner's revision nasal reconstruction on May 21, 2007, has not been established.

V ORDER

The Commissioner upholds U. S. Health and Life Insurance Company's adverse determination of September 10, 2007, denying coverage for the Petitioner's nasal reconstruction surgery on May 21, 2007.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.